

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Sweeney	Team: Squad #9	CCRB Case #: 201503341	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/29/2015 7:00 AM	Location of Incident: § 87(2)(b)	Precinct: 120	18 Mo. SOL 10/29/2016	EO SOL 10/29/2016	
Date/Time CV Reported Wed, 04/29/2015 8:21 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/29/2015 8:21 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Raymond Mccann	27819	938976	WARRSEC
2. DT3 Thomas Carter	01170	925036	WARRSEC
3. POM Joe Green	02409	938612	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Michael Petrone	06246	937285	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.POM Raymond Mccann	Abuse: PO Raymond Mccann threatened to damage § 87(2)(b)'s property.	§ 87(2)(g), § 87(4-b)
B.POM Joe Green	Abuse: Det. Joe Green entered § 87(2)(b) in Staten Island.	§ 87(2)(g), § 87(4-b)
C.DT3 Thomas Carter	Abuse: Det. Thomas Carter entered § 87(2)(b) in Staten Island.	§ 87(2)(g), § 87(4-b)
D.DT3 Thomas Carter	Abuse: Det. Thomas Carter stopped an individual.	§ 87(2)(g), § 87(4-b)
E.DT3 Thomas Carter	Abuse: Det. Thomas Carter frisked an individual.	§ 87(2)(g), § 87(4-b)
F.DT3 Thomas Carter	Abuse: Det. Thomas Carter searched an individual.	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)

Case Summary

On April 29, 2015, at approximately 7:00 a.m., at § 87(2)(b) in Staten Island, § 87(2)(b) was sleeping in his bedroom with his girlfriend § 87(2)(b). They were awakened by PO Raymond McCann of Manhattan Warrants knocking at the front door.

§ 87(2)(b) and § 87(2)(b) alleged the following: PO McCann threatened to break the door down if § 87(2)(b) did not answer the door (**Allegation A**). § 87(2)(b) and § 87(2)(b) heard two officers, identified as Det. Joe Green and Det. Thomas Carter of Manhattan Warrants, enter the house through the side door and walk up the stairs to the second floor (**Allegations B and C**). § 87(2)(b) rents the second floor of § 87(2)(b) to tenants. As the officers were walking away from § 87(2)(b), § 87(2)(b) saw the officers stop, frisk, and search an unidentified individual who is one of § 87(2)(b)'s second floor tenants (**Allegations D-F**).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) provided two videos that capture most of the incident (Board Review 1 and 2).

Mediation, Civil and Criminal Histories

- On April 29, 2015, § 87(2)(b) was presented with mediation via telephone, and he rejected it. On May 5, 2015, § 87(2)(b) was presented with mediation in person, and he rejected it because § 87(2)(b) (Board Review 3).
- A FOIL request revealed that as of August 10, 2015, a Notice of Claim had not been filed in regard to this incident (Board Review 4).
- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- PO McCann has been a member of service for 10 years and has 9 total allegations (Board Review 6). In case 200902418, a stop allegation was substantiated and command discipline was recommended and imposed. § 87(2)(g)
- Det. Green has been a member of service for 10 years and has 21 total allegations (Board Review 7). In case 200700923, two force allegations against him were substantiated; for one he received no punishment, and for the other, instructions. § 87(2)(g)
- Det. Carter has been a member of service for 15 years and has six total allegations, none of which have been substantiated (Board Review 8). In case 201311690, a stop was pleaded, and it was closed as complainant uncooperative.
- This is § 87(2)(b)'s first CCRB complaint (Board Review 9).

Potential Issues

- § 87(2)(b) stated during his interview and in a follow up call that his tenants did not want to cooperate with the investigation (Board Review 10). § 87(2)(b) did not provide any of his tenants' contact information because he did not feel comfortable doing so. A

LexisNexis search conducted on May 8, 2015, did not provide any contact information for the tenants, including the only identified tenant, § 87(2)(b).

- The closure of this case was significantly delayed because the Warrants Section could not locate the warrant that PO McCann, Det. Green, and Det. Carter were attempting to execute on April 29, 2015. A request made on April 29, 2015, to the CCRB's Monitoring and Analysis Systems for the location was returned on May 6, 2015, with negative results. A request to the Warrant Section on May 8, 2015, was returned on May 14, 2015, with negative results. A final attempt to the Warrant Section was made on August 27, 2015. The warrant and investigative data was sent to the investigator on September 21, 2015 (Board Review 24).

Findings and Recommendations

Allegation A—Abuse of Authority: PO Raymond McCann threatened to damage § 87(2)(b)'s property.

§ 87(2)(b) stated that he and his girlfriend, § 87(2)(b) were awakened by a loud knock at the door (Board Review 3). He went to the door and saw an officer identified as PO McCann through the stained-glass window. § 87(2)(b) asked PO McCann what he was doing there, and PO McCann said he had an arrest warrant and asked him to open the door. § 87(2)(b) asked whose name was on the warrant, and PO McCann said he would tell him after he opened the door. § 87(2)(b) refused to open the door, ran to the window in the bedroom, and started recording PO McCann, who was still on the steps in front of the door, with § 87(2)(b)'s phone. PO McCann stated that if § 87(2)(b) did not open the door, he would take down his door.

§ 87(2)(b) corroborated § 87(2)(b)'s statement (Board Review 11).

The first video shows § 87(2)(b) asking at 00:50 who is on the warrant (Board Review 1). PO McCann is heard saying, "I'm not telling you anything. You're going to answer my questions, or we are going to knock your door down and I'm going to come in your house," at 00:52. At 1:04, PO McCann says, "So you can either open the door, or we can knock the door down. Which would you prefer, sir? Would you prefer to open the door? Or would you prefer for us to knock it down?" At 2:36, § 87(2)(b) says, "You have a warrant for an arrest. You don't have a warrant for nothing else." PO McCann responds at 2:40, "I have an arrest warrant, sir, which entitles me to search this premise wherever a person can hide."

None of the officers who went to § 87(2)(b) on this date knew why the detective assigned to the case, Det. Petrone, had told them to go to this address. The only information PO McCann, Det. Green, and Det. Carter had was the arrest warrant, which listed a different address. PO McCann and his partners did not know if the perpetrator lived at § 87(2)(b) or was expected to be there when they went to that address.

PO McCann first stated that he did not recall if he threatened to break down the door (Board Review 12). He said that he did not tell § 87(2)(b) he was going to open the door—he told him that he could open the door because the arrest warrant gave him the authority to enter. PO McCann explained that if an investigation leads officers with an arrest warrant to a house, they can enter the house and search anywhere a person could hide. When he viewed the recording, PO McCann stated that he told § 87(2)(b) he could knock the door down because "it was a statement of fact." He added that when he spoke to § 87(2)(b) he did not know who was inside of the house, and believed that the individual for whom they were looking might be inside.

At that point, he still would have had the right to enter the house. If the officers can provide “the nexus that proves how the investigation led them to that address,” the entry is justified.

Det. Petrone stated that the arrest warrant was for § 87(2)(b) (Board Review 13). Det. Petrone's investigation led him to § 87(2)(b) because § 87(2)(b) once listed that address at the New York City Human Resources Administration (Benefits) office. This was verified in the warrant investigative data, which was received on September 22, 2015 (Board Review 24). Det. Petrone did not tell the officers anything about the suspect or the location before they went to § 87(2)(b). He did not tell them that he expected that the suspect would be at § 87(2)(b) when they went.

If officers attempt to execute an arrest warrant at a dwelling that is not the suspect's, an arrest warrant alone would not suffice. In order to demand entry to the dwelling of a third party in order to execute an arrest of another person, the officer must additionally possess a search warrant. Without a search warrant, an officer may only enter a third party's dwelling if he has consent or there are exigent circumstances People v. Rodriguez 19 Misc. 3d 302 (2008) (Board Review 14).

§ 87(2)(g)

Allegation B—Abuse of Authority: Det. Joe Green entered § 87(2)(b) in Staten Island.

Allegation C—Abuse of Authority: Det. Thomas Carter entered § 87(2)(b) in Staten Island.

§ 87(2)(b) stated that he heard, but did not see, PO McCann open the side door of his house and run up the stairs. He was able to hear this because the stairs are on the other side of his bedroom wall. § 87(2)(b) explained that this side door is always unlocked. The stairs beyond the side door lead directly to a second floor apartment that § 87(2)(b) rents to four tenants, only one of whom § 87(2)(b) felt comfortable identifying—§ 87(2)(b). § 87(2)(b) heard someone running down the stairs to meet PO McCann, who was already inside of the stairwell. He never saw officers inside of the stairwell. § 87(2)(b) then heard PO McCann ask someone, later identified as § 87(2)(b) for § 87(2)(b)'s name and how many people lived upstairs, and § 87(2)(b) provided these answers.

§ 87(2)(b) stated that she saw Det. Carter and Det. Green walk around to the side entrance of the house. § 87(2)(b) heard an officer say, "Oh, the door's open." § 87(2)(b) heard, but did not see, officers enter the side entrance, which leads to a set of stairs. § 87(2)(b) stopped recording for approximately five seconds and resumed recording when he heard footsteps entering the apartment. § 87(2)(b) heard footsteps ascending the stairs. She then heard footsteps descending the stairs, and both sets of footsteps stopped when they reached the approximate halfway point. She

could not hear if they were talking or what they were saying. She heard footsteps run down the stairs and exit through the side door. § 87(2)(b) thought the officers were only inside for five or six seconds. PO McCann never entered the house. By the time he walked over to the side door, Det. Carter and Det. Green were descending the stairs. § 87(2)(b) heard PO McCann, who was waiting by the side door, ask § 87(2)(b) who lived in the house and if § 87(2)(b) was “the head honcho.” She thought the officers spoke to § 87(2)(b) for ten or fifteen seconds.

Det. Carter stated that he was standing in front of the side door in case the person they were looking for tried to escape (Board Review 17). A male identified as § 87(2)(b) exited through the side door. Det. Carter never entered the house, and he never saw another officer do this. He did not hear anything that sounded like someone was running or running down the stairs before § 87(2)(b) exited the door. § 87(2)(b) did not say anything, and Det. Carter told him to “stand by for a second.” Det. Carter motioned to Det. Green to come over, and Det. Green motioned to PO McCann. They walked to Det. Carter and § 87(2)(b) PO McCann spoke to § 87(2)(b) because he had the warrant. PO McCann showed § 87(2)(b) the warrant and asked if he knew him. The officers sensed that they did not have a “positive hit” on the warrant, so they went back to their van.

Det. Green stated that Det. Carter told him to come over to the side door (Board Review 18). Det. Green and PO McCann walked over and saw the male. PO McCann asked him questions about the warrant. Det. Green never entered the house for any reason, and he never saw Det. Carter or Det. McCann enter.

PO McCann corroborated Det. Carter’s statement (Board Review 12). He never entered the apartment or saw Det. Carter or Det. Green enter.

At 3:05 of the first video, PO McCann descends the stairs in front of the door and walks to Det. Green, who leans in to tell him something (Board Review 1). Together, they walk toward the side of the house. § 87(2)(b) shuts the window, and the recording ends. At the beginning of the second video, § 87(2)(b) runs around the bed from one window to the other (Board Review 2). There are noises that sound like running, but it is impossible to tell if they are coming from someone coming up the stairs, going down the stairs, or from § 87(2)(b) himself, who was running toward the window. At 00:06, he arrives at the second window, which is closer to the side door, but is still facing the front of the house. § 87(2)(b) noted in his interview that at this point, § 87(2)(b) and the officers were directly outside of the side door. § 87(2)(b) places his phone near the window and uses it to record the officers’ conversation with § 87(2)(b) PO McCann and a low voice identified as § 87(2)(b) are heard, but it is too quiet to hear what they are saying. At 00:18, PO McCann says, “Just his girlfriend—just him and his girlfriend? And he owns the house, or runs the house, or whatever?” § 87(2)(b) response is short and unintelligible, and is followed by PO McCann saying, “Thanks, § 87(2)(b) and the officers walking away from the house.

§ 87(2)(g)

Allegation D—Abuse of Authority: Det. Thomas Carter stopped § 87(2)(b)

Allegation E—Abuse of Authority: Det. Thomas Carter frisked § 87(2)(b)

Allegation F—Abuse of Authority: Det. Thomas Carter searched § 87(2)(b)

It is undisputed that Det. Carter stopped § 87(2)(b) outside of § 87(2)(b)

§ 87(2)(b) stated that as the officers were leaving his house, he went outside and saw one of his tenants, a male, being detained by the officers. The officers placed him against a car, patted him down, and reached inside his pockets. § 87(2)(b) alleged that all of the officers were touching him. This tenant, whose name § 87(2)(b) did not feel comfortable providing, told § 87(2)(b) after the incident that the officers asked him who lived in the house, patted him down, and went inside his pockets. The officers told the male that he looked like the individual on the arrest warrant.

§ 87(2)(b) corroborated much of § 87(2)(b)'s statement. She stated that she did not know the male's name. She saw two of the three officers (she could not say which ones) pat down the male. She walked back into the house to call IAB and did not see officers reach inside of the male's pockets. The male who was stopped walked back toward § 87(2)(b). She never learned anything more about what happened between the male and the officers.

Det. Carter stated that when he was walking to the van, he saw a male he had never seen before walking toward § 87(2)(b). Det. Carter thought he looked like the male in the warrant photo. Det. Carter said to his partners, "This looks like the guy. I'm going to stop him." Nothing else factored in to his decision to stop him. Det. Carter could not say what specific characteristics the two had in common. He reiterated that they looked "exactly alike." He thought that they looked exactly alike even after he stopped him. He did not recall the pedigree information of the male on the warrant. Det. Carter identified himself and told the male that he looked a lot like the person on the warrant. He told him that it would be a very quick stop if it was not him. Det. Carter asked him if he had identification, and he said that he did not. Det. Carter asked where he lived, and the individual said he lived "around here." Det. Carter asked him where he was going, and he said, "I don't know—just taking a walk." The individual then reached toward his pockets with both his hands. Det. Carter grabbed the male's wrists and held him close to his legs to stop him from putting his hands in his pockets. He wanted to stop his hands because he was afraid for his safety. He thought he might reach for something that might hurt him. Det. Carter asked him what he was reaching for, and the male said, "My phone." Det. Carter patted down the outside of his pockets. He felt a bulge in one of his pockets. He thought it was a wallet or a phone—it was hard and rectangular. Det. Carter did not know if there was anything in the other pocket; he just remembered feeling the bulge in one pocket. He could not recall which pocket he felt the bulge. Det. Carter said, "Can you take that out?" and the individual reached into the pocket and took out his phone. Det. Carter never reached inside his pockets. Nothing else besides him reaching toward his pockets factored into Det. Carter's decision to frisk him. Det. Carter asked him again if he had any identification on him. The individual said he did not. Det. Carter said that he needed someone to verify that it was not him in the photo on the warrant. The male called his mother and handed his phone to Det. Carter. Det. Carter asked the mother, "Do you know whose phone this is?" and she said, "Yes, my son's," and then said the individual's name. This was not the individual's name on the warrant. This was enough for Det. Carter to determine that it was not the individual on the warrant, and the officers left.

PO McCann stated that as they were walking to their van, they saw a male walking. He was dressed in shorts and Crocs, and PO McCann thought that he was not dressed for the weather. PO McCann could not recall the weather that morning. PO McCann saw him walk away from the house approximately one minute after the officers arrived, and he saw him walk back toward the house after four or five minutes. He matched the description of the male for whom they were looking, which was a black male, approximately 6'0" tall, and 250 pounds. The officers stopped the male. They looked at the photo on the warrant, looked at his face, and asked

him for his identification. The male did not have identification on him, but the officers were able to determine that he was not the male on the warrant, so they let him go. Det. Carter frisked the male for safety reasons. PO McCann said that the male made him feel unsafe because he might have been the person on the warrant, and because of the “general commotion coming from § 87(2)(b)” referring to § 87(2)(b)s exiting the house and yelling at the officers. PO McCann did not notice any bulges on the individual. PO McCann denied searching the male, and he could not recall if he saw another officer search him.

Det. Green corroborated much of Det. Carter’s statement. Det. Green thought that the male looked like the person on the warrant. During the stop, Det. Green was standing behind and slightly to the left of Det. Carter. When asked if anything about this individual made him feel unsafe, Det. Green said that, “he was reaching in his pockets, and was a little bit fidgety.” Det. Green could not recall if the male reached into his pockets with both hands, but he knew that he reached at least with his right hand. Det. Green first said the male did not just reach toward his pocket; he actually placed his hand inside of his pocket or pockets. He then said that he was “not sure if he went all the way in and then took it out.” Det. Green did not recall if Det. Carter asked the male for what he was reaching. He did not recall if the male ever said for what he was reaching. When Det. Carter frisked the male, he patted down the outside of the male’s right pocket. He did not frisk him anywhere else. Det. Green could not see from where he was standing if it appeared that the male had anything in his pockets. He did not recall seeing a bulge on the male. Det. Green never saw Det. Carter reach inside the male’s pockets. After Det. Carter frisked the male, he said, “You can go inside your pocket,” indicating to Det. Green that the situation was safe. The male reached into his pocket and removed a phone.

Patrol Guide procedure 212-11 states that an officer may stop someone when he or she reasonably suspects that a person has committed, is committing, or is about to commit a crime. A frisk is proper if the officer suspects that the person is armed and dangerous. If a frisk reveals an object that feels like a weapon, a search may be conducted (Board Review 19). Grabbing someone’s hands while they are reaching is a measure to protect the officer’s safety. A person’s failure to comply with requests or answer questions after being stopped escalates encounters between police and civilians People v. Abdul-Mateen 126 A.D. 3d 396 (2015) (Board Review 16) People v. Wyatt 14 A.D. 3d 441 (2005) (Board Review 14).

§ 87(2)(g)

Det. Carter stated that he grabbed the male’s arms and pinned them to his sides because he feared that he might be reaching for something that could cause him harm. When he did this, he prevented him from retrieving whatever was inside of his pockets. He never lost sight of his hands, and when Det. Carter asked the male for what he was reaching, and the male said his phone. Det. Carter never instructed him to stop reaching toward his pockets. § 87(2)(g)

§ 87(2)(g). PO McCann and Det. Green stated that they did not notice any bulges on the male, and neither provided any additional specific reason for why they feared for their safety. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

[REDACTED]

§ 87(2)(g), § 87(4-b)

Investigator: _____
Signature Print Date

Pod Leader: _____
 Title/Signature Print Date

Attorney: _____
 Title/Signature Print Date